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Department of Economic Development and Planning
Division of Planning and Environment

STAFF REPORT

SECTIONS A14-14 THRU A14-25 OF THE SUFFOLK COUNTY ADMINISTRATIVE CODE

Applicant: Village of Sag Harbor Waterfront Overlay
Municipality: Village of Sag Harbor
Location: Includes the 22± acre commercial waterfront area north of Bay Street & Long Island Avenue, between West Water Street and Dering Road, as well as several non-waterfront commercial parcels south of Bay Street & Long Island Avenue between Bridge Street and Burke Street. Long Wharf and Windmill Beach are excluded.

Received: 6/29/21
File Number: Sa 21-02

Jurisdiction: Amendment of Sag Harbor Village Code Chapter 300 Zoning

PROPOSAL DETAILS

OVERVIEW – Application on the Village Board’s own motion for a local law amending Chapter 300 Zoning to include a new Art. XV to establish form based zoning regulations to govern development within a newly created [Waterfront Zoning Overlay District](#) and to amend the Zoning Map to establish the boundaries of the new district and to change the zoning designation of a portion of Steinbeck Park from Office to Parks and Conservation District.

The proposed Waterfront Overlay District is intended to “advance the objectives of the Sag Harbor Comprehensive Plan through standards that guide the relationship between building facades and the public realm, the form and mass of buildings in relation to one another, and the scale and type of streets and open spaces.”

The purpose and Intent section of the proposed Waterfront Overlay continues by stating that its standards intend to:

- “Protect and enhance the unique and eclectic character of the Village;
- Preserve and enhance public views of the waterfront and provide continuity of access directly to the water;
- Encourage a diversity of scales, architectural styles, and materials which respects the historical character and gives the Village its authentic nature;

- Provide a diversity of housing types for Village residents and visitors; Support a mixture of industrial, commercial, water-dependent, and residential uses;
- Enhance streetscaping and the pedestrian environment with accommodations for other transportation options, where needed and appropriate;
- Establish development controls to reduce reliance on parking as a metric for determining the scale of a proposed development; and
- Incorporate strategies to minimize adverse impacts on groundwater and surrounding surface waterbody quality.”

The Waterfront Overlay applies to properties within the Village Business District, (VB) Office District (OD), Waterfront (WF), and Parks and Conservation (PC), and supersedes most underlying regulations on permitted uses, dimensional regulations, lot frontage, height, gross floor area, and accessory apartments. Parking requirements remain unchanged. Existing standards and procedures for Historic Preservation, Architectural Review, and Flood Hazards remain in effect.

The proposed Waterfront Overlay establishes an intent within the VB District for human-scaled walkable-mixed use development with ground-story commercial and buildings 1-3 stories in height, and the intent within the OD district as a transitional district with mixed-use and single-use buildings between 1-3 stories in height. The intent of the WF district remains unchanged, namely “to protect views of the harbor and/or shore from vantage points in both districts; and restrict uses and development along the shoreline.” The intent of the PC district is “to facilitate the use of land for parks, recreational areas, beach areas, open spaces, open areas, nature preserves, and historic sites.”

Three building types are established within the Waterfront Overlay: Mixed Use Building, General Building, and Civic Buildings. New construction or substantial alteration must correspond to a particular building type. General Buildings are not permitted with the VB districts, but otherwise all building types are permitted in each district.

- Mixed use buildings are “designed to facilitate a mix of uses with an active ground story and is a primary element in a pedestrian oriented, mixed-use environment.” In addition to lot dimension minimums and coverage maximums, the form based code provides standards for minimum and maximum building setbacks, maximum height and step backs, minimum and maximum ground floor and upper story transparency, maximum blank wall width, and multiple entrances. The code also requires mixed use buildings have vertical and horizontal articulation, and large display windows. Mixed use buildings are permitted throughout the district, but ground-floor retail is required in the VB district, and very limited ground floor retail is permitted in the OB district by special exception.
- General Buildings are “designed to accommodate one predominant use, such as residential, office, or hospitality, and is typically not inclusive of a ground story shopfront.” Similar to Mixed-Use Buildings, the Form Based Code regulates General Buildings with minimum and maximum setbacks and blank walls. While the height and step backs are the same, the requirement for minimum ground floor transparency is less, and only one entrance is required. Upper story transparency is the same. General

Buildings are not permitted in the VB district. Mixed-use is permitted in General Buildings, and General Buildings can seemingly be built to the same maximum ground floor and upper story transparency as Mixed-Use Buildings, although they are only allowed in districts where permitted retail uses are limited.

- Civic Buildings are “designed to stand apart from its surroundings due to the special nature of its use as a public facility.” The code states that Civic Buildings are only permitted to be occupied by certain uses, including “museum; philanthropic, fraternal, social, educational office or meeting room, nonprofit; public library; religious institutions; school; art gallery; theater, live; theater, motion picture; or post office.” Civic Buildings are permitted slightly larger maximum setbacks and less minimum transparency than mixed-use buildings. They do not have restrictions on blank walls or multiple entrances.

The Waterfront Overlay District requires that ADA compliant sidewalks be provided, as well as bicycle parking, landscaping, and refuse storage. Mechanical equipment must be screened from view. Commercial uses are limited to 2,000 square feet of gross floor area. Detached residences are not permitted. Upper story-dwellings are permitted in the VB district, and apartment buildings as well as upper-story dwellings are permitted by special exception in OD. However, no residential uses are permitted in the Waterfront District, or on any waterfront parcels in any district.

Waterfront properties are required to provide a 30’ setback from the water called a “Waterfront Yard” parallel to the water, in addition to a “Visual Access Yard” perpendicular to the water that is a minimum of 20% of the lot width. Waterfront Yards and Visual Access yards must be kept clear of permanent structures, fencing, and parking, except for water-dependent uses, walkway, parks, or open space. Visual Access yards are intended to extend from public rights of way to the extent practicable.

The Waterfront Overlay divides the area into two sub-zones for height. Height Sub-Zone A, which applies to six non-waterfront parcels at the southern periphery of the zone, permits a maximum of 3 stories (35’), as-of-right with a required third-floor setback. Height Sub-Zone B, which covers most of the district, including waterfront and non-waterfront properties, permits a maximum of 2 stories (25’). However, the waterfront properties within the Height Sub Zone B are eligible for a setback one-story height bonus for providing a public amenity. The bonus is approved at the discretion of the Sag Harbor Planning Board based on public benefits that offset any detriment of approving the height bonus. Public benefits must include public waterfront access, and at least three other benefits including green building systems, historic preservation, and enhanced accessibility, restoration of habitat, waterfront recreation, larger street trees, or waterfront trails.

The Waterfront Overlay District has a detailed table of uses that restricts commercial and retail uses in a manner similar to the underlying zoning. While most types of retail, commercial, food service, and office uses are permitted in VB, a very limited number of retail uses are permitted in OD by special exception. Office uses are not permitted on the first floor of VB.

STAFF ANALYSIS

The Sag Harbor Zoning Diagnostic Study notes that “Form Based Codes Encourages a mix of uses.” However, the proposed Waterfront Overlay is still relying on conventional Euclidian zoning to attempt to separate uses between the VB and OD districts. Many of these use regulations include very specific use categories, such as a prohibition on “shoe stores” in the OD district that permits “clothing stores” by special exception. Distinctions are made between shops that serve “coffee,” “ice cream,” “snacks,” and deli. Such use restrictions seem to lack a specified land use rationale. The code is missing clear definitions for certain uses, which could make enforcement problematic. The code gives the Building Inspector the authority to categorize any unlisted use. Many uses require a Planning Board special exception approval, especially in the Office District. Overly onerous use restrictions could limit the effectiveness of the Overlay District.

Other use definitions have implications for massing under the Form Based Code. For example, the existing code’s definition of “Art Gallery” as “sale of visual art created by one or more artists,” means a retail use selling any form of “visual art” could presumably occupy the “Civic Building” type, with different restrictions than “Mixed Use Buildings.” It is unclear whether multiple uses are permitted in Civic Buildings, or if non-civic uses can repurpose Civic Buildings if the “civic” use is discontinued. The stated intent is for uses “open to the general public,” yet permitted uses include “fraternal” and “social clubs” which may not be considered open to the general public. Other permissible Civic Building uses, such as “museum” or “live theatre” do not appear to have a stated definition.

The Form-Based Code establishes a minimum and maximum setback for all building types, creating a build-to zone. Buildings must have 80% of their linear width of their first two stories within the build-to zone. If there is a desire to maintain a consistent street wall, form-based codes often establish a minimum lot frontage occupancy percentage, or a percentage of the lot’s “build-to zone” that must be occupied by a building.

For existing nonconforming buildings in the Overlay District, compliance with the Form Based Code upon reconstruction may require extensive modifications. As the intent of the Code is to protect the historic character, the Village should consider how the code might be applied to any historically significant buildings. For nonconforming buildings being expanded, it may be challenging to apply the code to only a new portion of a building. Consideration should be given to procedures and criteria for variances when strict compliance with Form-Based Code may not meet with the intent of the Code or result in otherwise undesirable outcomes.

The Sag Harbor Zoning Diagnostic Study, and Proposed Overlay note that the code should “Encourage scales, architectural styles, and materials which respect historic character and give the Village its authentic nature.” However, the Proposed Overlay offers no guidance or on architectural styles, materials, or historic character. Published design guidelines and/or architectural standards would be helpful in advancing the intent of the Code and ensuring new development yields the desired results. The code seeks to enhance the “eclectic character” of the

Village, but additional guidance may be needed to prevent new development from being identical in terms of massing and design, resulting in a homogenous character.

An intent of the code is to “establish development controls to reduce reliance on parking as a metric for determining the scale of a proposed development.” However, the existing off-street parking standards in the underlying zoning still apply. Certain existing buildings are currently exempt from parking requirements. The surface parking requirements may make it difficult for new development to build to the maximum permitted lot coverage, resulting in parking minimums continuing to determine scale of development. Consideration could be given to parking stall reduction techniques that would reduce the need for surface parking in new projects.

All of the building types in the proposed Form Based Code regulate the maximum building size based on a percentage of the lot size and minimum setbacks. Nationwide experience with Form-Based codes reveals that this approach can potentially result in oversized or irregular buildings on oversized or irregular lots, especially if multiple parcels are assembled. If that is a concern, Form-Based Codes can regulate the maximum depth and/or width of individual buildings to ensure larger lots are developed with multiple buildings at a smaller scale.

The plan notes that an intent is to “Provide a diversity of housing types for Village residents and visitors.” It appears that residential uses are limited to upper-story dwellings or live-work units permitted as-of-right on 12 smaller parcels along the south side of Bay Street and Long Island Avenue, which all seem to be limited in height to 2 stories. “Apartment Buildings” would be permitted by special exception on only three eligible parcels, including the Village Grid Property and the Post Office.

STAFF RECOMMENDATION

Approval of the proposed local law amending Chapter 300 Zoning to include a new Art. XV to establish form based zoning regulations to govern development within a newly created Waterfront Zoning Overlay District and to amend the Zoning Map to establish the boundaries of the new district and to change the zoning designation of a portion of Steinbeck Park from Office to Parks and Conservation District with the following comments:

1. The Village should consider revising its use restrictions within the Form-Based Code to allow for a greater flexibility of permissible uses within the Overlay District. Traditionally, Form-Based Codes employ broad use categories and rely primarily on design and massing to achieve the desired form. Internal scale limitations on commercial uses should clarify whether they are per use, per building, and whether they apply to upper-story uses as well as ground-floor uses.
2. Many uses and key terms in the code are seemingly undefined, including “shopfront,” “park,” “flag lot” “museum”, etc. The definition for “Lot area” should indicate it does not include area contained within the boundary lines that is seaward of the Mean High Water Line. Clear definitions for all uses and key terms should be provided to ensure the code can be easily understood, fairly applied, and effectively enforced.

3. The form based code should further define and clarify which use(s) are permitted to occupy a “Civic Building,” including whether mixed-use and residential uses would be permitted, and what constitutes a “principal use”. The code may wish to clarify whether a designated “Civic Building” may be used by a permitted non-civic use if the civic use is discontinued. Additional guidance on Civic Buildings may be helpful to ensure that it meets the intent of being “designed to stand apart from its surroundings,” as well as “prominently sited and architecturally significant.”
4. Published Architectural Standards and/or Design Guidelines for each building type to accompany and supplement the Form-Based Code would be helpful in providing guidance to applicants and ensuring that new development meets the intent of the Overlay District and is not homogenous.
5. Establishing procedures for concept review and preliminary review of applications to ensure compliance with the Form Based Code early in the application process would be beneficial. A set of procedures and criteria should be clearly identified for variances or modifications to the Form-Based Code when strict interpretation would conflict with the intent of the code or otherwise result in an undesirable outcome.
6. The Village may wish to explore adding additional Form-Based Code elements to the code, including, but not limited to, incorporating a maximum building depth and/or width, and/or setting a minimum and/or maximum lot build-to zone or lot frontage occupancy percentage.
7. The Village may wish to consider establishing design standards for private and public frontages and streetscapes in terms of yards, street trees, hedges, street lighting, fencing, outdoor furniture, etc. Thought should be given to ensuring adequate provisions for outdoor dining where appropriate.
8. The Form-Based Code should consider including “sight triangle” requirements to ensure vehicular and pedestrian visibility is not obstructed at intersections by corner properties.
9. The Form-Based Code should consider limitations on what percentage of ground-story windows can be occupied by permanent and/or temporary signage, as well as whether shades, blinds, or other window obstructions are permissible.
10. The Village should consider encouraging or incentivizing parking stall demand reduction strategies to help reduce the number of parking stall required in new developments. Applications for development in the Waterfront Overlay should review the Commissions Model Code on Parking Stall Demand Reduction or be required to explore additional techniques to reduce parking demand including but not limited to the unbundling of parking cost from rent, parking cash-out programs, promotion of car sharing and ridesharing, etc. The SCPC Model Code for Parking Stall Demand Reduction includes twenty three concepts for the reduction of parking stall demand.

The Suffolk County Planning Commission has produced a draft “model code” and report on such PSDR techniques and has recommended that no building or structure should be constructed, used or occupied without the adoption of Parking Stall Demand Reduction (PSDR) techniques conditioned, through covenants and restrictions, on land use and development approvals issued by municipal planning boards. For convenience a link to the model code is provided below:

<https://www.suffolkcountyny.gov/portals/0/formsdocs/planning/SCPlanningCommission/2019/PSDR%20Final%20Draft%20103019.pdf>

11. The Waterfront Overlay District should require of an applicant to make every attempt when marketing workforce units to include individuals and their families with developmental disabilities to promote independence and inclusive communities. Affordable units should have consistent design and consistent access to those of the rest of the development. (i.e. no separate entrances)
12. Applicants within the Waterfront Overlay should be encouraged to review the Suffolk County Planning Commission publication on Managing Stormwater-Natural Vegetation and Green Methodologies and incorporate into the proposal, where practical, design elements contained therein.
13. Applicants within the Waterfront Overlay District should be encouraged to review the Suffolk County Planning Commission Guidebook particularly with respect to public safety and universal design and incorporate where practical, applicable elements contained therein.
14. Applicants within the Waterfront Overlay District should be encouraged to review the Suffolk County Planning Commission Guidebook particularly related to energy efficiency



Figure 3B: Height Sub-Zones

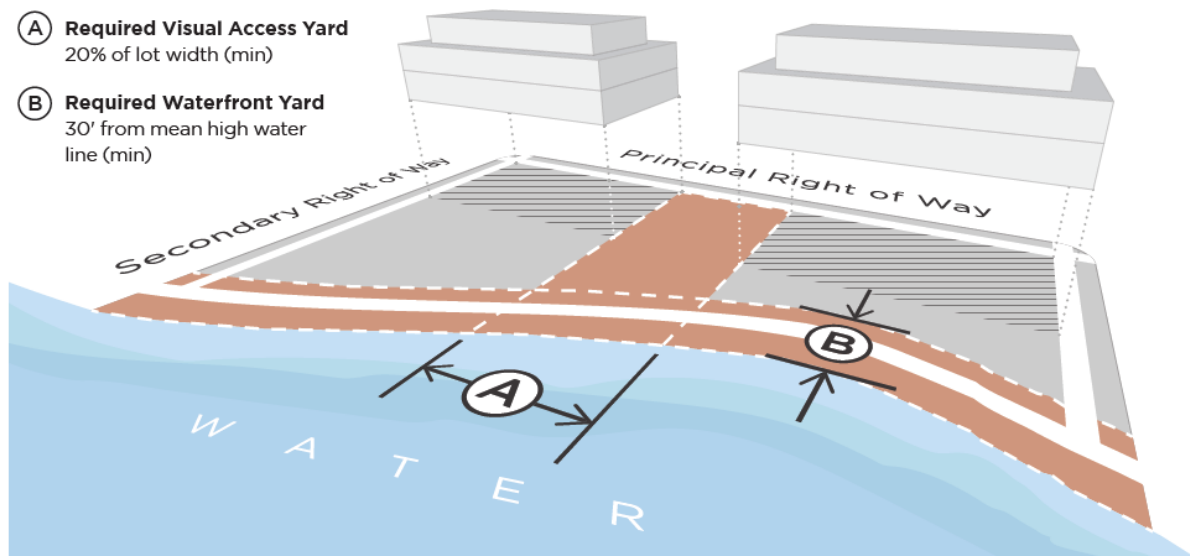


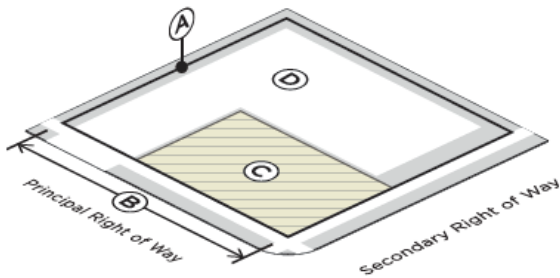
Figure 3A: Waterfront Yards & Visual Access Yards



3.2.1 Mixed Use Building

3.2.1 Mixed Use Building, *continued*

3.2.1.A. Lots



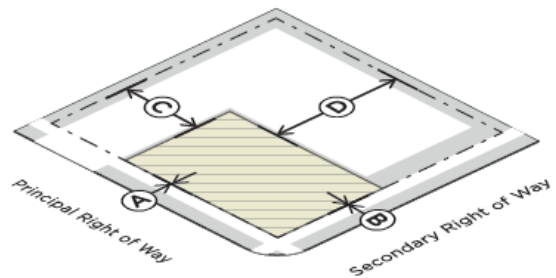
Lot Dimensions

A	Lot area (min)	VB, OD:	1,250 SF
		WF, PC:	N/A
B	Lot width (min)	VB, OD:	20'
		WF, PC:	N/A

Lot Coverage

C	Building coverage (max)	VB, OD, WF:	70% ¹
		PC:	20%
D	Impervious coverage (max)	VB, OD, WF:	70% ²
		PC:	25%

3.2.1.B. Setbacks



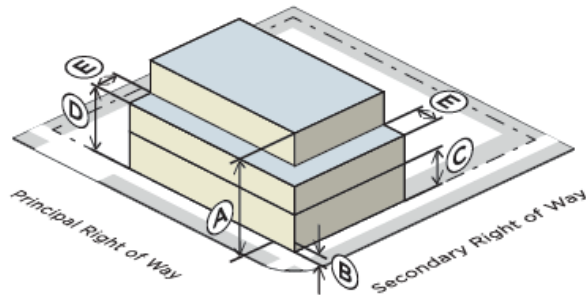
Building Setbacks

A	Front (min/max)	VB, OD:	0' / 5'
		WF, PC:	N/A
B	Corner side (min/max)	VB, OD:	0' / 5'
		WF, PC:	N/A
C	Interior side (min/max)	VB, OD:	0' / 15' ¹
		WF, PC:	N/A ¹
D	Rear (min)		0' ¹

¹ An interior side setback of at least 5' in depth, and/or rear setback of at least 15' in depth, is required where the applicable lot line abuts an R-20 district.

3.2.1 Mixed Use Building, *continued*

3.2.1.C. Height



Building Height

A	Stories (max)	Height Sub-Zone A:	3 stories
		Height Sub-Zone B:	2 stories
	Height (max)	Height Sub-Zone A:	35'
		Height Sub-Zone B:	25' ²

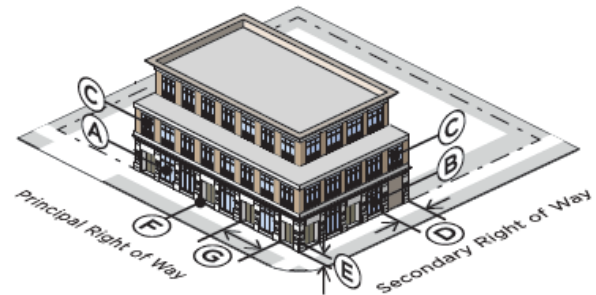
Story Height

B	Ground floor elevation at main entrance (min/max)	0' / 2' ³
C	Ground story height, floor to floor (min)	13'
D	Second story height, from grade (max)	25'
E	Third story setback, front & corner side facades (min)	10'

² Refer to [Section 3.1.4 Height Bonus](#), to achieve limited additional height in exchange for certain public benefits.

³ Where a mixed-use building is located within a FEMA flood zone, dry floodproofing is required in lieu of raising the ground floor elevation more than 2' above the sidewalk level.

3.2.1.D. Activation



Transparency

A	Ground story transparency, front facade (min/max)	70% / 95%
B	Ground story transparency, corner side facade (min/max)	40% / 95%
C	Upper story transparency, front & corner side facades (min/max)	25% / 70%
D	Blank wall width, front & corner side facades (max)	10'
E	Ground story window sill height, front & corner side facades (min/max)	0.5' / 2.5' ⁴

Pedestrian Access

F	Main entrance location (required)	Front facade
G	Entrance spacing along front facade	At least 1 entrance for each 25' of facade width

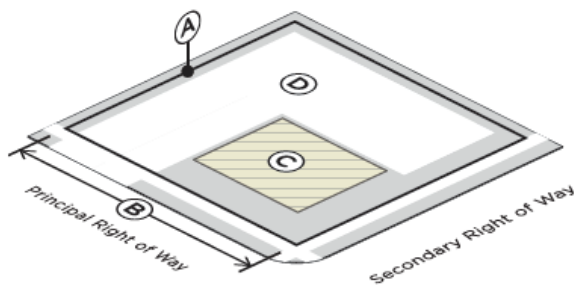
⁴ The ground story window sill height may be up to 4' to accommodate a FEMA-required flood wall.



3.2.2 General Building

3.2.2 General Building, *continued*

3.2.2.A. Lots



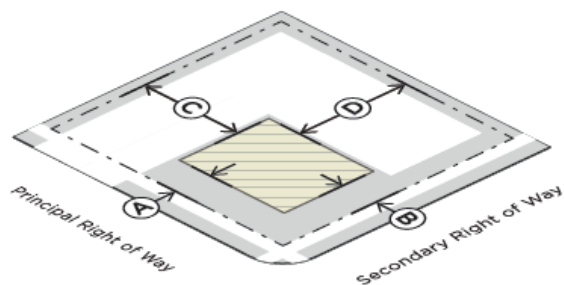
Lot Dimensions

A	Lot area (min)	OD:	1,800 SF
		WF, PC:	N/A
B	Lot width (min)	OD:	30'
		WF, PC:	N/A

Lot Coverage

C	Building coverage (max)	OD, WF:	70%
		PC:	20%
D	Impervious coverage (max)	OD, WF:	70%
		PC:	25%

3.2.2.B. Setbacks

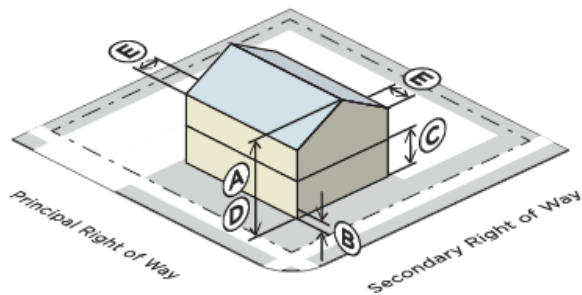


Building Setbacks

A	Front (min/max)	OD:	5' / 10'
		WF, PC:	N/A
B	Corner side (min/max)	OD:	5' / 10'
		WF, PC:	N/A
C	Interior side (min/max)	OD:	5' / 30'
		WF, PC:	N/A
D	Rear yard (min)		15'

3.2.2 General Building, *continued*

3.2.2.C. Height



Building Height

A	Stories (max)	Height Sub-Zone A:	3 stories
		Height Sub-Zone B:	2 stories
	Height (max)	Height Sub-Zone A:	35'
		Height Sub-Zone B:	25' ¹

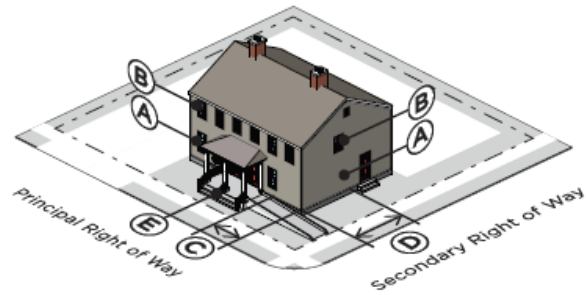
Story Height

B	Ground floor elevation (min/max)	0' / 4' ²
C	Ground story height, floor to floor (min)	10'
D	Second story height, from grade (max)	25'
E	Third story stepback, front & corner side facades (min)	10'

¹ Refer to [Section 3.1.4 Height Bonus](#), to achieve limited additional height in exchange for certain public benefits.

² A general building may have a ground floor elevation greater than 4' only to accommodate FEMA flood zone requirements.

3.2.2.D. Activation



Transparency

A	Ground story transparency, front & corner side facade (min/max)	30% / 95%
B	Upper story transparency, front & corner side facades (min/max)	20% / 70%
C	Blank wall width, front facade (max)	10'
D	Blank wall width, corner side facade (max)	20'

Pedestrian Access

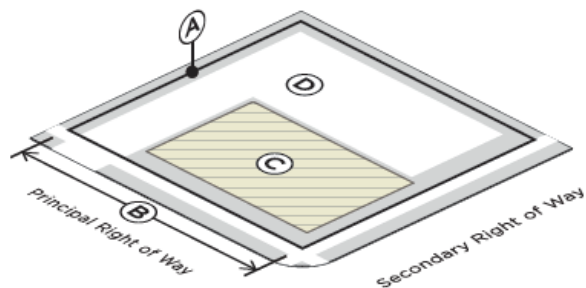
E	Main entrance location (required)	Front facade
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3.2.3 Civic Building

3.2.3 Civic Building, *continued*

3.2.3.A. Lots



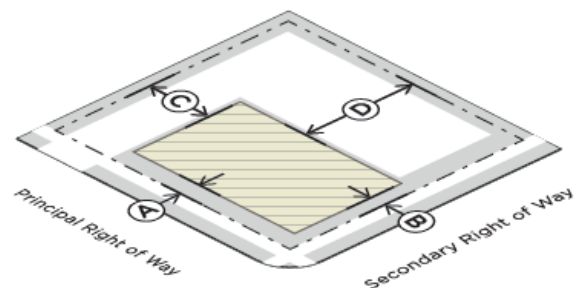
Lot Dimensions

A	Lot area (min)	VB, OD:	3,000 SF
		WF, PC:	N/A
B	Lot width (min)	VB, OD:	50'
		WF, PC:	N/A

Lot Coverage

C	Building coverage (max)	VB, OD, WF:	70%
		PC:	20%
D	Impervious coverage (max)	VB, OD, WF:	70%
		PC:	25%

3.2.3.B. Setbacks



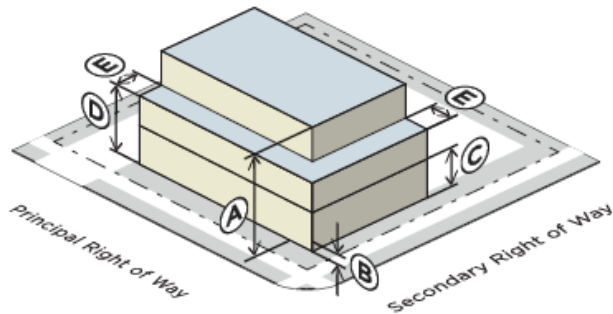
Building Setbacks

A	Front (min/max)	VB, OD:	0' / 10'
		WF, PC:	N/A
B	Corner side (min/max)	VB, OD:	0' / 10'
		WF, PC:	N/A
C	Interior side (min/max)	VB, OD:	0' / 30' ¹
		WF, PC:	N/A ¹
D	Rear (min)		0' ¹

¹ An interior side setback of at least 5' in depth, and/or rear setback of at least 15' in depth, is required where the applicable lot line abuts an R-20 district.

3.2.3 Civic Building, *continued*

3.2.3.C. Height



Building Height

(A)	Stories (max)	Height Sub-Zone A:	3 stories
		Height Sub-Zone B:	2 stories
	Height (max)	Height Sub-Zone A:	35'
		Height Sub-Zone B:	25' ²

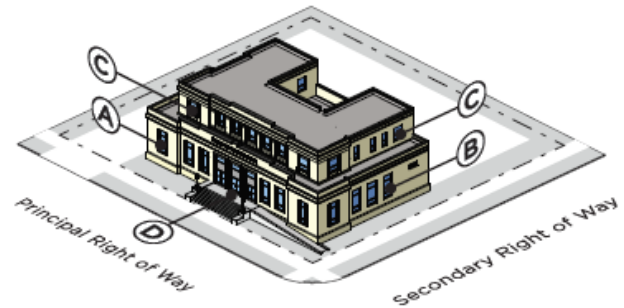
Story Height

(B)	Ground floor elevation (min/max)	0' / 4' ³
(C)	Ground story height, floor to floor (min)	10'
(D)	Second story height, from grade (max)	25'
(E)	Third story stepback, front & corner side facades (min)	10'

² Refer to [Section 3.1.4 Height Bonus](#), to achieve limited additional height in exchange for certain public benefits.

³ A civic building may have a ground floor elevation greater than 4' only to accommodate FEMA flood zone requirements.

3.2.3.D. Activation



Transparency

(A)	Ground story transparency, front facade (min/max)	40% / 95%
(B)	Ground story transparency, corner side facade (min/max)	40% / 95%
(C)	Upper story transparency, front & corner side facades (min/max)	40% / 95%

Pedestrian Access

(D)	Main entrance location (required)	Front facade
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